Cherokee Culvert Company, Inc. *and* Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America. Cases 10-CA-16009 and 10-CA-16882

July 14, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On December 11, 1981, Administrative Law Judge Leonard N. Cohen issued the attached Decision in this proceeding. Thereafter, the General Counsel, Respondent, and the Charging Party filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Cherokee Culvert Company, Inc., Macon, Georgia, its officers, agents, successors, and assigns, shall take the actions set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Contrary to the Administrative Law Judge, Member Jenkins would find that Plant Superintendent Justice's statements to James Sinclair on or about May 13, 1980, constituted an unlawful solicitation of grievances and an implied promise to remedy such grievances. The credited testimony reveals that Justice approached Sinclair and told him that he (Justice) had never had a chance to talk to Sinclair about the Union. Justice told Sinclair that the Employer did not need the Union, that they were having enough problems as it was. Justice said the Union would create more problems. Justice then said that he was human and made mistakes and that the employees ought to have been men enough to come and talk to him about his mistakes. In view of the proximity to the election, Respondent's numerous contemporary violations of Sec. 8(a)(1), and the implicit promise in Justice's statement, i.e., that he had made mistakes but they could be solved if the employees presented them to him, Member Jenkins would conclude that Justice's statement violated Sec. 8(a)(1).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees about their union activities, sympathies, and desires.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT promise benefits to our employees if they reject the Union.

WE WILL NOT threaten our employees with economic reprisals if they select the Union.

WE WILL NOT threaten to transfer our employees if they select the Union.

WE WILL NOT refuse to bargain collectively with Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America, as the exclusive representative of our employees in the certified unit by failing and refusing upon request to furnish it with information relating to job descriptions, wages, and other benefits and conditions of employment of employees employed in the job classifications of machine operator, mechanic, and mechanic helper as well as information regarding the maintenance and repair of trucks when such work is no longer performed by our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America, information relating to job decriptions, wages, and other benefits and conditions of employment of employees employed in the job classification of machine operator, mechanic, and mechanic helper as well as information regarding the maintenance and repair of trucks when such work is no longer performed by our employees.

CHEROKEE CULVERT COMPANY, INC.

DECISION

STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: This matter was heard by me on July 13 and 14, 1981, in

Macon, Georgia, pursuant to complaints issued on September 3, 1980,[1] and May 12, 1981, in Cases 10-CA-16009 and 10-CA-16882, respectively, by the Regional Director for Region 10 of the National Labor Relations Board. The complaints, which were consolidated for hearing by Order also dated May 12, 1981, are based upon charges originally filed on July 7, 1980, and April 13, 1981. The complaints allege that Respondent committed various violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. Respondent filed timely answers to the complaints in which it denied having violated the Act.

All parties appeared at the hearing and were afforded full opportunity to present oral and written evidence and to examine and cross-examine the witnesses. Upon the entire record, together with the careful observation of the demeanor of the witnesses and after careful consideration of the post-trial briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Cherokee Culvert Company, Inc., herein called Respondent, is a Georgia corporation with its principal office and place of business in Macon, Georgia, where it is engaged in the manufacture of corrugated steel culvert pipes. Jurisdiction is not in issue. Respondent admits, and I find and conclude, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits, and I find and conclude, that Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES—FACTS AND CONCLUSIONS

A. *Background—Complaint Allegations*

Respondent manufactures and distributes galvanized corrugated steel pipe from its Macon, Georgia, plant. With one exception, the approximately 14 production and maintenance employees and truckdrivers work under the direct supervision of Plant Superintendent Dick Justice, who in turn reports to Hal Jarrard, Respondent's president and general manager.

In early March an organizing effort commenced among Respondent's employees and on May 15 the majority of the employees selected the Union as their representative. On May 23 the Acting Regional Director certified the Union as the exclusive bargaining representative in the following stipulated unit:

> All production and maintenance employees employed by Respondent at its Macon, Georgia facility including truckdrivers, machine operators and mechanics, but excluding all office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

The parties commenced bargaining on June 15 and, despite meeting on some 25-30 separate bargaining occasions, they had not, by the time of the instant hearing, reached agreement on a first contract.

The issues raised by the complaints and litigated at the hearing can be divided into four separate categories. First, the General Counsel contends that Respondent, through individual conversations between Justice and seven employees, unlawfully, and in violation of Section 8(a)(1), interrogated its employees about their union activities, created the impression of surveillance of its employees' union activities, promised its employees' economic benefits to reject the Union, and threatened employees with loss of pay and other reprisals, including transfer, because of their support of the Union.

Second, the General Counsel contends that Respondent, in violation of Section 8(a)(1) and (3), unlawfully transferred employee Ernest Woodford from mechanic's helper to general shop employee because of the employees' selection of the Union.

Third, the General Counsel alleges that, in violation of Section 8(a)(1), (3), and (5), Respondent, within days of the election, unilaterally and without notice to the Union, changed existing employee benefits by taking away from its truckdrivers credit cards and by denying its truckdrivers the privilege of taking their trucks home overnight because of the employees' selection of the Union.

Finally, the General Counsel contends that Respondent, in violation of Section 8(a)(5) and (1), failed and refused to furnish the Union with information concerning the wages, duties, and benefits received by two individuals, machine operator W. Don Williams and mechanic Thomas Stowe.

B. *The Alleged 8(a)(1) Conduct by Justice*

1. Facts

In support of these allegations the General Counsel called seven employee witnesses who all claimed to have had one or more conversations with Justice prior to the union election. While Justice does not deny having certain conversations with these seven employees, his version of the conversations, not suprisingly, differs materially from the employees' versions. According to both the employees and Justice, each of the conversations discussed below were one-on-one conversations which are not subject to corroboration.

a. *Conversations with Sinclair*

Truckdriver James Sinclair testified that on the Wednesday before the Thursday election Justice came up to him and stated that he, Justice, had not had a chance to talk to Sinclair before this time about the Union. Justice then stated that Respondent did not need a union and that they were having enough problems as it was out there and a union would probably create more problems. Justice then stated that he was human, like ev-

[1] Unless otherwise indicated, all dates are in 1980.

eryone else, and he had made mistakes like everyone else but that employees ought to be men enough to come to him and sit down and talk about the mistakes. Sinclair answered that Justice knew that, if he, Sinclair, had anything he did not like, he would come talk to Justice about it. Sometime during this conversation Sinclair informed Justice that he was going to be the union observer at the election.

Justice admitted talking to Sinclair on the day before the election, but testified that it was limited to Sinclair's coming to him and stating that he would need to stay close to the facility the following day since he was going to be the union observer. Under this account, Justice merely answered, "Okay." According to Justice, he and Jarrard, in an earlier conversation, had concluded that Sinclair was probably sympathetic to the Union and he therefore was instructed by Jarrard not to talk to Sinclair about the Union.

b. *Conversations with Robert Williams*

Truckdriver Robert Williams testified that he had two conversations with Justice prior to the election. The first occurred about a month before the election when he was riding in the yard in Justice's pickup truck. According to Williams, Justice stated that the employees did not need a union. Justice then asked him what did the employees need with a union. Williams responded, "I don't know."

Williams testified that the second conversation took place about an hour before the election as Williams was driving his truck into the yard. Justice got up on the running board and told him to pull his truck around to the side of the building. As Williams did so, Justice stated that he needed Williams' vote and would give him a 21-cent-an-hour raise starting that day and another raise the following month. Williams testified that prior to this conversation he had never discussed a raise in pay with Justice. Williams did not receive a raise as of the election day or subsequently.

Justice testified that he had two conversations with Williams about the Union. The first occurred some 6 to 8 weeks prior to the election at a time when he and Sinclair were riding together in Justice's pickup truck. Williams asked Justice what he thought the employees should do about the Union. Justice answered that he really did not know how the rest of the men felt but if that was what the majority of the men wanted they should do it. Justice then stated that he could not talk with Williams at that time because he did not know anything else that he could say. Justice did indicate that he would get back with Williams when he found out what he could tell him. Subsequent to this meeting he met with Jarrard and informed Jarrard of the discussion he had had with Williams.

Approximately 2 to 3 days before the election Justice had a second conversation with Williams. At this time he told Williams that he had found out what he could and what he could not say about the Union. Justice stated he felt like they did not need a union, and that the problems that they might have they could talk about and work them out. Williams did not say anything other than that he needed to know something. Justice then asked Williams for his support in the election. He stated that Williams had been there a long time and that he thought he could count on, and would appreciate, Williams' support in the election. Justice testified that during these conversations he never asked Williams a question and he specifically denied ever promising him a raise.

c. *The conversation with Clarence Williams*

Clarence Williams, a laborer, testified that approximately 2 months before the election he had a conversation with Justice about the Union. On that occasion Justice asked him if he had ever been in a union before. When Williams answered that he had not, Justice then stated that it would be better to try to keep the Union out. Williams stated that Justice also said other things about the Union but that he could not recall what.

Justice admitted having one conversation with Williams in which the Union was discussed, but places this conversation on the Monday prior to the election while the two were riding in his truck to another portion of the yard. According to Justice, he asked Williams if he had ever belonged to a union before. When Williams answered, "No," Justice stated that he felt like the problems, if there were any problems, could be worked out and that he would appreciate Williams' support in the election.

d. *Conversations with Bobby Singleton*

Truckdriver Bobby Singleton testified he had one conversation with Justice regarding the Union. This conversation took place on the morning of the election while he was in Justice's truck. Justice allegedly told him he would give him a 20-cent-an-hour raise if he did not vote for the Union. Justice said that the Union was no good and it would not do anything but take their money. Justice added that if Singleton voted for the Union they would make less money since they were currently making more money than average tractor trailer drivers. According to Singleton, he had on one prior occasion "a long time before this conversation" discussed a raise with Justice. Like Robert Williams, Singleton did not receive a raise at this time.

Justice testified that a couple days prior to the election as Singleton was getting into his truck he walked up to Singleton and asked for his support in the election. Justice stated that he told Singleton that they did not need a union and that Justice would like to have his support. According to Justice, Singleton merely shook his head and said, "okay." Justice specifically denied either promising Singleton a raise during this conversation or threatening that his pay would drop if the Union came in.

e. *Conversations with Roosevelt Curry*

Roosevelt Curry, a laborer, testified that approximately 2 weeks before the election he had a conversation with Justice in the rear of the plant. According to Curry, Justice told him that he, Justice, had an even number of employees for and against Respondent and that with his vote the Company could win. Justice then asked him how he felt about being in the Union. Curry made no response to Justice's questions or remarks. Curry testified that he had several conversations with Justice about the

Union, but at the hearing he was only questioned regarding the above conversation.

Justice testified that he had several conversations with Curry about the Union. On the first occasion, which took place in the plant, Justice walked up to Curry and stated that they did not need a union and that he would appreciate Curry's support in the election. On this occasion Curry merely answered, "Okay." The second discussion took place a couple days before the election. Justice went back to where Curry was working in the plant and again told him that they did not need a union and that he would appreciate Curry's support in the election. Justice testified that he did not ask Curry any questions in either of these conversations and he specifically denied ever telling Curry that there were an even number of employees for and against the Union.

f. *Conversations with Riggins*

Carey Riggins, a laborer, testified he had two conversations with Justice before the election. The first conversation took place 2 weeks before the election near the back door of the plant. Justice asked him what he thought about the Union and stated that the Union was going to come around and take his money. Riggins did not testify with regard to the second conversation.

Justice also testified that he had two conversations with Riggins about the Union. According to Justice, the first such conversation took place about 1 or 2 weeks prior to the election. On that occasion Justice walked up to Riggins and told him that they did not need a union. According to Justice, that was the entire extent of the conversation. The second occasion was a few days prior to the election. Justice again walked up to Riggins and said that he needed Riggins' support in the election. Riggins just nodded his head and walked away. Justice denied ever asking Riggins any questions in either of the conversations.

g. *The Conversation with Ernest Woodford*

Immediately prior to the election, Ernest Woodford was spending a substantial portion of his time working in the truck shop as a mechanic's helper to mechanic Tom Stowe.[2] According to Woodford, his single conversation with Justice about the Union occurred at the truck shop on the day prior to the election. According to Woodford, Justice came up to him and without explanation or elaboration informed him that if the Union came in Woodford would have to be moved. Nothing further was said by either Woodford or Justice at this time.

Justice denied ever having any conversation with Woodford prior to the election.

h. *Justice's general defense*

Justice testified that during the union campaign he spoke to all but two of the employees in an effort to explain the good points about the Employer and to convince the employees that they did not need a union. In the following question and answer, Justice summarized these conversations in the following terms.

> Q. And in trying to help people make up their minds which way to, did you not attempt to put the Company's best foot forward?
>
> A. There again, sir, they wouldn't give me an opportunity to even talk about our company. We never had a discussion about what the company could or could not do or anything. That's, when I talked to one of my employees, like, I walked up and told one of them that we didn't need a Union, well, he didn't want to talk to me, and nodded his head and said okay. Now how can you talk? I'm talking to this employee and he won't let me, so I say I didn't talk to any of them really other than in trying to make a stand that I was management and that's about the size of the conversations.

Still later, Justice elaborated further when he stated:

> You're getting back to a conversation where they wouldn't let you say anything. When you can't talk to nobody, you can't say anything, so, therefore, I never had a chance to say anything. How can you carry on a conversation with a man that answers by "yes" and smiles and goes on? That's not a conversation.

2. Credibility resolutions

As Administrative Law Judge Benjamin Schlesinger observed in *Cas Walker's Cash Stores Inc.*, 249 NLRB 316 at 321 (1980):

> Resolution of credibility conflicts are often difficult, requiring the weighing of equally plausible narrations of testimony of witnesses who appear to be telling the truth and who are no more prejudiced and biased than others who are telling a wholly different story. Ofttimes, there are no fatal inconsistencies nor contradictions for the determiner of factual issues to seize upon to arrive at a firm conclusion. In those instances, the trial judge or jury must rely upon a sixth sense and instinct, which makes the resolution of certain conflicts somewhat unsatisfactory, leaving the chance, sometimes slight and many times significant, that the final decision was erroneous. A reasonable doubt remains.

Unfortunately, such is the case here. For the reasons set forth below, I credit, with no particular enthusiasm, the employees' versions over Justice's.

On the one hand, Justice was able, with no apparent hesitancy and without the aid of any contemporaneous notes, to recall and place in relation to the election each of the conversations recited above. Yet, when it came time for him to testify regarding the collection of the credit cards, an event even more recent in time, his memory became somewhat clouded and he suddenly became unsure of when this action was taken. Moreover, Justice's frustration in getting the employees to engage him in conversations about the need or lack thereof for union representation in no way prevented him from either questioning employees about their sentiments or making other statements regarding the election.

[2] Woodford's job duties, both before and after the Union election will be discussed in some detail in a following subsection.

On the other hand, the majority of the seven employees who gave the testimony recited above were not nearly so certain of the dates and the substance of their conversations as was Justice. However, I do not view any such defects or lapses in their memories as particularly unusual or fatal. A common thread runs throughout most of their testimony. Moreover, I note that each of the seven testified adversely to Respondent notwithstanding that they were still in its employ.[3] Further, Respondent presented no facts or arguments which convinces me that these employees, unsophisticated and unlettered in the complex world of labor relations law, would, either individually or in a group, intentionally fabricate their testimony to assist the Union to the detriment of their current employer.

3. Conclusions on the 8(a)(1) allegations

a. *Interrogations*

The complaint alleges that Respondent committed four separate instances of unlawful interrogation: Justice asking Clarence Williams if he had ever belonged to a union, Justice asking Roosevelt Curry how he felt about being in the Union, Justice asking Carey Riggins what he thought about the Union, and Justice asking Robert Williams what the employees needed with the Union.

A supervisor's questioning regarding the employees' union sympathies is coercive because such questioning conveys an employer's displeasure with the employees' union activities and thereby discourages such activities in the future. Further, the coercive impact of these questions is not diminished by either the employees' open union support or by the absence of attendant threats. *Gossen Company, a Division of the United States Gypsum Company*, 254 NLRB 339 (1981).[4] Accordingly, I find that the General Counsel has established these violations of Section 8(a)(1) as alleged.

b. *Impression of surveillance*

The General Counsel contends that Respondent unlawfully created the impression of surveillance when Justice informed Roosevelt Curry that Respondent had an even number of employees for and against Respondent and that with Curry's vote Respondent could win the election.

Curry could reasonably assume from Justice's comment that the employees' union activities were under surveillance. *Tifton Electric Company and Professional Furniture Company*, 242 NLRB 202 (1979). Accordingly, I find that the General Counsel has established this violation of Section 8(a)(1) as alleged.

c. *Promise of benefits*

The General Counsel contends that Respondent made unlawful promises of benefits when, on the day of the election, Justice promised Robert Williams and Bobby Singleton raises in exchange for their support in the election. That such conduct constitutes an unlawful promise of benefit in violation of Section 8(a)(1) warrants no discussion.

d. *Threats of reprisals*

The General Counsel alleges that Respondent made unlawful threats of reprisals by Justice's remarks to Sinclair that the Union would "probably create problems" and to Singleton that if the Union won the election the truckdrivers would make less money.

As to the first allegation I find Justice's reference to the probability of the Union causing more problems to be too vague to be actionable under Section 8(a)(1). This remark was not accompanied by any examples of the type of "problems" to which Justice may have been referring. Moreover, I note the absence of any other unlawful conduct during this conversation. Justice may well have been simply referring to problems the Union would cause Respondent. As such, this remark did not exceed the bounds of Section 8(c) of the Act. Accordingly, I recommend dismissal of this allegation.

Justice's above-summarized statement to Singleton was intended to and had the effect of impressing upon Singleton the futility of the unionizing of Respondent. This is especially so in view of Justice's contemporaneous unlawful promise to Singleton of a raise. Accordingly, I find that the General Counsel has established this 8(a)(1) allegation as alleged.

e. *The threat to transfer*

The General Counsel contends that Justice's statement to Woodford that if the Union won the election Woodford would be moved from his work station constitutes an unlawful threat of reprisal in violation of Section 8(a)(1). Although, as will be discussed below, Respondent was motivated in changing Woodford's duties subsequent to the election entirely by valid business considerations, Justice, in his preelection discussion with Woodford, made no mention of the reasons behind the possible transfer. Instead, we are left with the naked threat that Woodford would be moved if the Union won the election. Accordingly, I find that the General Counsel has established this violation of Section 8(a)(1) as alleged.

f. *Solicitation of grievances*

The General Counsel alleges that Justice's statement to Sinclair to the effect that the employees should come to him and talk about his mistakes constituted an unlawful solicitation of grievances for the purpose of causing employees to reject the Union as their collective-bargaining representative. I disagree. Justice's solicitation of grievances is not a *per se* violation of the Act. No accompanying promise was shown, either actual or implied, that any grievance would be remedied. *Sunset Coffee and Macadamia Nut Co-Op of Kona*, 225 NLRB 1021, 1023

[3] See *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified on other grounds 308 F.2d 89 (5th Cir. 1962).

[4] The case relied on by Respondent, at least as to the Clarence Williams conversation, *St. Louis Comprehensive Neighborhood Health Center, Inc.*, 248 NLRB 1078, 1087 (1980), is inapposite. There, the Board majority, in reversing an Administrative Law Judge, found that the employer's questioning of employees regarding strike misconduct of which they were accused was a *bona fide* investigation of those allegations and contained no coercive overtones.

(1976). Accordingly, I recommend that this complaint allegation be dismissed.

C. *The 8(a)(3) and (5) Allegations Regarding Credit Cards*

1. Facts[5]

Since the mid-1970's Respondent had distributed to each of its truckdrivers a Union 76 gasoline credit card, which the truckdrivers were permitted to use to buy gasoline and oil while on the road.[6]

In the week following the election Justice collected each truckdriver's credit card.[7] At the time Justice took back the cards, which were due to expire at the end of June, he explained to each driver that, when they took trips of substantial length, gasoline credit cards would be furnished with the delivery tickets. There is no allegation that the drivers were not subsequently furnished with new cards when taking lengthy trips.

In denying that the union election played any part in reaching this decision, Respondent points to two factors, the near obsolescence of the cards and the potential for their abuse, as the only factors which motivated it to take the action when it did.

In 1978 and 1979 Respondent, as a cost-saving measure, began adding an ancillary gasoline tank to each of its trucks.[8] As a result of this change nearly all deliveries could be made without the necessity of refueling prior to making the return trip. Although no supporting documents or records were introduced, it appears that by May 1980 the drivers used the credit cards infrequently.[9]

The second factor which served as the impetus for Respondent was the misuse in February of the card by Robert Williams for personal use. On that occasion Williams submitted to Justice a receipt for the purchase of gasoline. Williams explained to Justice that he had run out of money while on a personal out-of-state-trip. Justice informed Williams that he was not supposed to use the card for personal use and he instructed the bookkeeper to deduct the amount purchased on the card from Williams' paycheck.[10]

In mid-April while reviewing the paychecks Jarrard discovered Williams' earlier purchase. Jarrard and Justice then met and discussed the situation. Jarrard testified that while the two reached no final decision there was an agreement that the cards would be taken from the drivers at some future point. Justice testified that it was his understanding that he and Jarrard had reached a final decision to collect the cards. In any event, when the new credit cards were delivered to Respondent, Justice did in fact collect the cards from the individual drivers.

2. Conclusions

Relying on the timing of Respondent's actions, as well as the alleged pretextual nature of the business reasons advanced by it in support thereof, the General Counsel contends that this change in practice was taken in direct reprisal for the employees' selection of the Union. For the reasons set forth below, I find that the General Counsel has not established this violation of Section 8(a)(3) by a preponderance of the evidence.

While the timing of Respondent's action, coming less than a week after the election, is suspicious, more is required than suspicion, even when coupled with demonstrated union animus. Only 1 month prior to the collection of the credit cards, Robert Williams' misuse of his card was brought to Respondent's president and general manager's attention. Further, the cards that were collected were due to expire in 6 weeks or less. Taking these factors into account substantially diminishes any inference of unlawful motivation caused by the timing of the change.

Moreover, I find that Respondent did possess a valid business consideration for its conduct. The fuel capacity of the trucks had, over the past 2 years, been substantially increased. Therefore, the need for the drivers to possess cards on shorter trips was virtually eliminated. On the longer trips where a driver would need to refuel, cards were provided. These factors, plus the recent incident of a driver's misuse of the card, provided reasoned business considerations apart from the union activity of its employees. Accordingly, I recommend that the 8(a)(3) allegation arising from the collection of the credit cards be dismissed.

Further, under the circumstances of this case, I do not find that the General Counsel has established that the collection of the credit cards constituted a refusal to bargain. The General Counsel failed to demonstrate how the change in practice from supplying each driver with his own credit card to keep in his possession to a practice whereby Respondent would furnish the driver with a card on all trips where it could reasonably be foreseen that the driver could have legitimate need for the card was a significant change from past practice[11] or had any impact on the employees or their working condition.[12]

Jarrard's testimony that by the spring of 1980 the use of credit cards by drivers was infrequent was not challenged or contradicted. Moreover, no evidence was of-

---

[5] Except as specifically noted the material facts involving this allegation are not in dispute.

[6] At all times the card had a $50 limit. On those occasions when major mechanical problems arose while the truckdrivers were on the road, they would call Respondent, who in turn would arrange by telephone for towing and/or repair.

[7] The record is somewhat hazy as to the exact circumstances surrounding the actual collection of these cards. Justice initially testified that this was done at either the beginning of June or the end of May. However, he did state during his testimony that he could have taken this action within a week of the election.

[8] The fuel stored on Respondent's premises, which is purchased in bulk, is substantially cheaper than what could be purchased on the road. Drivers have always been required to fill up their trucks prior to leaving for a delivery.

[9] At no time during the hearing were specifics offered regarding the frequency of use of the credit cards by May 1980.

[10] I reject as implausible that portion of Williams' testimony in which he alleges that he alone, among the truckdrivers, had been previously granted permission to use the company credit card for personal use and that Justice acknowledged as much during this conversation. I recognize, of course, that in other sections of this Decision I have credited Williams' testimony. This result is required under the circumstances of this case. *Carolina Canners, Inc.*, 213 NLRB 37 (1974). "Nothing is more common than to believe some and not all of what a witness says." *Edwards Transportation Company*, 187 NLRB 3 (1970), enfd. 449 F.2d 155 (5th Cir. 1971).

[11] *Rust Craft Broadcasting of New York, Inc.*, 225 NLRB 327 (1976).

[12] *Lawson-United Feldspar & Mineral Co.*, 189 NLRB 350 (1971).

fered that any driver had in the recent past used a credit card for other than fuel. Therefore, in view of Respondent's continued furnishing of the card for all lengthy trips it is difficult to perceive how the change had any real impact on the drivers' working conditions.[13] Accordingly, I recommend that the 8(a)(5) allegations arising from Respondent's treatment of the credit cards be dismissed.[14]

D. *The 8(a)(3) and (5) Allegations Regarding Employees' Use of Their Trucks*

1. Facts

According to employees Robert Williams, John Curry, James Sinclair, and Bobby Singleton, Justice, during the week of May 19 and more probably on May 19 itself, informed the truckdrivers that they were not to take their trucks home with them at night anymore and, as a consequence of this instruction, this common practice ceased. While Justice denied issuing that order in the week following the election, he testified in some detail and at some length that he had issued similar orders on many occasions previously both in group meetings, as well as in private conversations with individual truckdrivers.

Justice testified that the policy regarding truckdrivers taking their trucks home at night or on weekends has never changed. That policy, as it has existed for some 14 years, has been that truckdrivers are not permitted to take their trucks home without permission. At the time that each truckdriver is interviewed and hired Justice informs him that he needs his own transportation to get to and from the facility. Although the company policy prohibited employees from taking their trucks home Justice admitted that he made exceptions to this policy occasionally over the years and did permit employees who would be returning to the plant late at night or who would have to leave for a delivery early in the morning to take their trucks home with them at night. Justice further testified that over the entire course of the facility's existence truckdrivers would on occasion ignore this policy and take their trucks home without permission. If more than one driver violated the policy he would speak to the employees in a group; if there was just one violation by an individual truckdriver he would speak to that individual alone.

The testimony of the four truckdrivers regarding the policy as it existed prior to May 1980 is somewhat confused and contradictory. In this regard Sinclair testified that he was expected to have his own transportation to and from the facility. Sinclair recalled that when his car had been in an accident approximately 4 years earlier Justice had given him permission to take his truck home until his car was repaired. Sinclair also stated that since that time he would occasionally take his truck home when he returned to the plant late; however, Sinclair admitted that on those latter occasions Justice never gave him such permission. Sinclair did not indicate whether Justice had knowledge either before or after the fact of what he had done.

Singleton, a truckdriver for 5 years, testified that at no time prior to the election had Justice ever told him that he could not take his truck home at night without permission or that he would need to furnish his own transportation to and from work. However, he did admit that on the three or four occasions that he had in fact taken his truck home he always sought and received permission beforehand from Justice.

Robert Williams testified that when he was hired approximately 14 years ago he was not told that he would need his own transportation and was specifically told that he could take his truck home. Although he allegedly had blanket permission to take his truck home at night Williams stated that he only did so when he came in from the road late. Williams testified that he did attend several meetings prior to the election during which Justice informed the truckdrivers that they were not to take their trucks home. Williams stated that on those occasions he reminded Justice that Justice had "promised" him that he could take his truck home and Justice answered that Williams could, but no one else.

Truckdriver Curry testified that, when he was hired approximately 4 years before, Justice told him that he was expected to furnish his own transportation. Curry further testified that he attended group meetings where Justice told the truckdrivers that Robert Williams had been with the Company longer and that, while Justice did not mind Williams taking his truck home, he did not want other trucks going out if they did not have to.

Justice testified that he has had a problem with Robert Williams taking his truck home for 14 years. Justice stated that on numerous occasions he informed Williams that he could not take his truck home but that on eight or more occasions Williams called from the south of Georgia and informed him that he would be in late and on those occasions he permitted Williams to take his truck home. Justice admitted that he was more lenient in his treatment of Williams than he was with the other truckdrivers.

Both Justice and Jarrard testified that the two main reasons that truckdrivers were prohibited from taking their trucks home without permission was the expense of the fuel and the liability to Respondent should the trucks be in or be the cause of an accident.

In support of its contention that Respondent always had a policy against employees taking their trucks home,

[13] I reject the General Counsel's arguments that since the parties spent substantial time at the bargaining table on this very issue they were thereby acknowledging the fact that the use of credit cards was in fact a real benefit to the drivers. If this were a relevant consideration, it would be equally relevant to note that the tentative contract proposal which the parties eventually reached merely confirmed Respondent's practice as it currently existed.

[14] The Board, in two recent cases, *Louisiana Council No. 17, AFSCME, AFL-CIO*, 250 NLRB 880, 889 (1980), and *Florida Steel Corporation*, 231 NLRB 923 (1977), reached contrary conclusions on a similar issue. Both cases are factually distinquisable from the instant matter.

In *Louisiana Council No. 17, supra*, the employer cancelled the employees' credit card priviledges and forced employees to use their own money and wait a week for reimbursement. Similarly, in *Florida Steel, supra*, the employer prohibited the employees from using credit cards for lodging and meal allowances, while at the same time imposing restrictions on the amount of money to be paid for their meals and lodging. In both cases, the employer's action had a substantial impact on the employees' working conditions. That impact is missing here.

Respondent introduced a 1978 warning to Curry from Justice. The warning reads:

> Please be advised that if you continue to take your company vehicle home at night in defiance of the plant manager's order, your employment with this company will be terminated. A copy of this letter will be placed in your personnel file.

2. Conclusions

The General Counsel contends that Respondent, in violation of Section 8(a)(3), retaliated against its employees for their selection of the Union by instituting a new policy prohibiting truckdrivers from taking their trucks home with them at night. The General Counsel further alleges that Respondent took this action without notice to the Union and thereby also violated Section 8(a)(5). For the reasons set forth below, I find that the General Counsel has not established either of these allegations by preponderance of the evidence.

Put quite simply, the record evidence does not establish that Respondent instituted a new policy after the election with regard to the employees taking their trucks home.[15] The record discloses that for many years Respondent had a policy of prohibiting employees without the express permission of the plant manager from personal use of their trucks. Any instructions Justice may have given to the truckdrivers in the week following the election on the subject were merely recapitulations of longstanding instructions. Moreover, no showing was made that subsequent to the election any employee was denied permission to take his truck home where, in similar circumstances, he would have been permitted to do so prior to the election. Accordingly, I recommend that all allegations arising from this incident be dismissed.

E. *The Refusal To Furnish Information*

1. Facts[16]

On or about June 15, some 3 weeks after the certification issued, the parties met for the first time in an effort to negotiate a contract. At either this meeting or shortly thereafter, the Union requested a list of employees with their job classifications, rates of pay, seniority, fringe benefits, salary, and conditions of employment. By letters dated July 25 and 30, respectively, the Union informed Respondent that the information furnished by Respondent did not include any information on mechanic Thomas Stowe and machine operator Don Williams.

Respondent, by letters dated July 28 and August 5, respectively, notified the Union that Stowe had voluntarily terminated his employment with Respondent on June 4 and that Williams was promoted to a supervisory position subsequent to the election and was therefore "no longer included in the bargaining unit."

By separate letters dated March 27, 1981, the Union requested the following information:

> Please be advised that this correspondence is in reference to the continuing request of wages and benefits you paid the mechanic and mechanics that perform maintenance and repair work on your equipment and vehicles.
>
> In the stipulated consent, we agreed to include in the bargaining unit the mechanic classification, one of the mechanics at that time was a Mr. Thomas Stowe that you stated quit his job with you. Please furnish me the following information, the rate of pay and other benefits of the mechanic classification and on helpers, the date Mr. Stowe quit, the names of the employees now doing the maintenance and repair work of your equipment and vehicle [and their] rates of pay and benefits. If the maintenance and repair work is not being done by Cherokee Culvert employees, please furnish me the details of who is doing this work, the date when the new arrangement went into effect, and the financial arrangements paid for the performance of these duties previously performed by employees of Cherokee Culvert Pipe Company.
>
> * * * * *
>
> Upon my previous requests of wages and fringe benefits of machine operator W. Don Williams, you previously advised me that machine operator W. Don Williams is now in a supervisory position.
>
> Please supply me with the rates of pay and fringe benefits for machine operators classification before his promotion. The date he was promoted, the changes in his duties he performed as machine operator, and the power he has in the present position over the machine operator classification. Your immediate attention to this request will be appreciated.

The Union sent identical letters to the Respondent dated April 10.

By letter dated April 13 counsel for Respondent answered the Union's request. This letter states in pertinent part:

> We are perplexed by your letter of April 10 since you and I discussed the information sought by the letter in some detail during the bargaining session on April 9. In fact, as I recall, after I had responded point by point to the information you requested in your letters, you stated that you had not really desired to discuss the information sought in the first place. Therefore, rather than attempt to repeat all of the information I related to you on April 9 in this letter, we have assumed that your April 10 letter is an oversight.
>
> If this is not the case, please advise us as to the specific information which you still need.

By letter dated April 21 the Union sent the following response to Respondent's April 13 letter:

[15] I am satisfied with Justice's explanation that, while Robert Williams was not exempt from the general rule, Justice was more lenient in his case in granting permission for Williams to take his truck home. Williams offerred no evidence that this treatment changed after the election.

[16] The material facts in this subsection are not in dispute.

> In reference to your letter dated April 13, 1981, concerning my request for certain information on Thomas Stowe and W. Don Williams.
>
> To set the record straight, the only information you gave orally in the negotiating meeting was the date June 11, 1980 when W. Don Williams was supposed to have been changed. Thomas Stowe, you stated, quit on the same date. You stated to us it was none of the Union's business what these men were making then. I pointed out to you that these men were in the bargaining unit and upon your insistance that we included the mechanic (Thomas Stowe), you would agree to a stipulated consent election.
>
> Your response to my request was that it was none of my business. I asked you to answer my request in writing, you stated you would.
>
> Please be advised that we still request the information on Thomas Stowe and W. Don Williams as attached. You can be assured our request was no oversight.

The only testimony offered at the hearing regarding what may have transpired at an April bargaining session on this subject was the testimony of Wash Mitchell, a laborer and member of the bargaining committee. In essence, Mitchell merely testified that the Union requested information on both Stowe and Williams and that Respondent informed the Union at the bargaining session that Stowe had come to the Company and quit voluntarily early in June and about the same time Williams had been promoted to a supervisory position where he had the authority to hire and fire. At no time during this meeting or subsequently has Respondent furnished any of the information requested by the Union in its March 27 letters.

2. Contentions and conclusions

The consolidated complaint alleges that Respondent, since on or about April 4, has refused in violation of Section 8(a)(5) to comply with the Union's requests of March 27 for certain wage and related information concerning Stowe and Williams.

Respondent, while conceding that it refused to furnish the Union with the information sought, argues that its refusal was justified and lawful since neither Stowe nor Williams were, at the time of the request, bargaining unit employees. In support thereof, Jarrard testified that, in early June, Stowe informed him that he did not wish to work for an organized company and was terminating his employment with Respondent in order to go to work for Macon Concrete Company, hereinafter called MCC. Although employed as a truck mechanic for Respondent, Stowe actually performed his work at a truck shop located on MCC's property which adjoined Respondent's. While an employee of Respondent, Stowe also performed mechanical work on MCC's trucks. As the *quid pro quo* for Respondent's not billing MCC for the time Stowe spent working on its trucks, Cherokee paid MCC no rent for use of the truck shop. Subsequent to his termination of employment with Respondent, Stowe in fact commenced employment with MCC in the same truck shop. Stowe continues while an employee of MCC to work both on MCC's trucks as well as on Respondent's trucks. Respondent is billed on a quarterly basis for the percentage of Stowe's time spent working on Respondent's vehicles. MCC pays Stowe's salary and makes all deductions and payments to required funds.

With regard to Williams, Jarrard testified that, in early June, Williams was promoted from a machine operator to superintendent of pipe production, and was given a full-time employee to supervise. At the same time, Williams was changed from an hourly employee to a salaried employee and was reassigned from Justice's supervision and instead reported directly to Jarrard. Further, Respondent contends that due to Williams' new authority and responsibilities, including the authority to order material in the amounts of $7,000 to $8,000 on his own, Williams became a managerial employee who would be excluded from the unit irrespective of his supervisory status.

Respondent claims that the sole reason given by the Union in seeking the information was that the Union, despite being orally informed to the contrary by Respondent, continued to believe that Stowe and Williams were bargaining unit employees and, as such, the Union was entitled to the information in its efforts to fairly represent these employees. Even if I were to fully agree with this characterization, I would not be persuaded that Respondent is legally excused from complying with the requests.[17]

"It is well established that wage and employment information pertaining to bargaining unit employees is presumptively relevant for the purposes of collective bargaining and contract administration inasmuch as such information concerns the heart of the employer-employee relationship, and that such information must be provided upon request to the unit employees' bargaining representative." *Andy Johnson Co., Inc.*, 230 NLRB 308 at 309 (1977).

It is difficult to perceive of more relevant information to the Union than that which would either confirm or refute Respondent's assertion that two individuals whose job classifications were specifically included in the bargaining unit were, less than 1 month after the election, suddenly out of the unit. This is even more true where both individuals appeared to continue to perform the identical duties in the identical locations as before. "Any information concerning the status or compensation of bargaining unit employees is presumptively relevant to the union's statutory duty, and hence is producible under

[17] Respondent additionally contends that the complaint allegation is time barred by Sec. 10(b) of the Act. I find no merit in this contention. It is well settled that Sec. 10(b) is a statute of limitations and is not jurisdictional in nature. As such, it is an affirmative defense and, if not timely raised, is waived. *Vitronic Division of Penn Corporation*, 239 NLRB 45 (1978). Respondent here did not plead or litigate the issue at the hearing, but instead first raised this defense in its post-hearing brief. I do not find that Respondent's introduction, without explanation, of the early correspondence between the Union and Respondent on this subject amounts to "litigating the issue at hearing." In any event, it is abundantly clear that the Union's requests of March 27, 1981, are not merely repetitions of its earlier requests, but instead are requests for additional information which constitutes a new cause of action.

the terms of the Act. *The Brooklyn Union Gas Company*, 220 NLRB 189, 191 (1975). Nowhere does the Act require that the Union must accept without any verification an employer's claim that bargaining unit employees are now out of the bargaining unit.

Moreover, as to a portion of the information sought on Stowe, it is clear that the Union's purpose by late March was more than a mere need to determine whether Stowe was or was not an employee of Respondent. This request sought specific details as to what arrangements Respondent then had for the repair of its trucks by nonemployees. Such information could potentially be necessary for meaningful negotiations on subcontracting issues. See *B. F. Goodrich General Products Company a Division of the B. F. Goodrich Company*, 221 NLRB 288, fn. 6 (1975).

To justify the issuance of a Board order requiring the supplying of requested information, it need not be shown that the information sought is clearly dispositive of the basic issues between the parties. Instead, the Union need merely demonstrate "the probability that the desired information [is] relevant, and that it [will] be of use" to the Union in fulfilling its statutory duties and responsibilities. *N.L.R.B.* v. *Rockwell-Standard Corporation, Transmission and Axle Division, Forge Division*, 410 F.2d 953, 957 (6th Cir. 1969), quoting from *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 437, fn. 6 (1967). Here, the Union has demonstrated such a probability.

In view of the above findings and conclusions, I need not and specifically do not pass upon Williams' current status. Such a finding would in no way alter or change Respondent's bargaining responsibilities. Accordingly, as set forth above, I conclude that the Union in its March 27 letter sought potentially relevant information concerning issues between the parties and that Respondent's refusal to supply such information violated its duty under Section 8(a)(5) of the Act.

F. *Alleged Unlawful Transfer of Ernest Woodford*

1. Facts

The General Counsel alleges that Respondent followed through on Justice's unlawful threat to transfer Woodford (see sec. B,3,e, above) when, on the day after the election, Woodford was moved from the truck maintenance shop and assigned to work in the plant. It is undisputed that, at least prior to April, Woodford spent a considerable amount of his time in the truck shop assisting Stowe and that at some point in time his duties were changed to that of a general shop employee with the resultant reduction, if not outright elimination, of his mechanic's helper duties.[18] What is disputed is exactly when Woodford's duties were changed and what event or events caused the change.

Justice testified that due to a business slowdown Respondent, by early in April, laid off three truckdrivers with the result that a substantial percentage of Respondent's trucks sat idle. With the reduction in use of the trucks, Woodford began spending more time in the plant and finally, around the end of April or first of May, he was moved quasi permanently to the plant.[19]

No employees of Respondent had replaced Woodford in performing mechanic's helper duties in the truck shop.

2. Conclusions

I do not find either Justice's or Woodford's version of when Woodford was moved from the mechanic shop to the plant as wholly satisfactory. Woodford's recitation of what jobs he performed and when he performed them throughout his 5 years of employment was confused and at times contradictory. For example, Woodford initially testified that he never drove a truck for Respondent while employed as a mechanic's helper. Yet, later in his testimony, he admitted driving a truck on occasion both before and after the election. Moreover, I did not find him to be an entirely candid witness. In this regard, despite knowing of the layoff of truckdrivers, Woodford stated that he did not even notice that there was a slackening in truck repair work. Based upon the entire record, it would appear that Woodford was moved from the truck shop to the plant not in April or May but in early June.

In any event, it appears, based upon the entire record herein, that Woodford's move was occasioned by two factors: (1) the slackened truck repair requirements, and (2) the fact that Stowe, shortly after the election, quit Respondent's employ and began work as an employee for Macon Concrete. Therefore, based upon the above and specifically noting the absence of any evidence that Respondent knew that Woodford even supported the Union, I find that the General Counsel has not met its burden of establishing that Woodford's move was unlawful. Accordingly, I recommend that this allegation be dismissed in its entirety.

Upon the foregoing findings of fact and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent Cherokee Culvert Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Local Union 1210 has been the exclusive representative for the purposes of collective bargaining of the employees in the following described unit:

> All production and maintenance employees employed by Cherokee Culvert Company, Inc., at its Macon, Georgia facility, including truckdrivers, machine operators and mechanics; but excluding all office clerical employees, salesmen, professional em-

[18] Woodford's hours, wages, and basic conditions of employment did not suffer by reason of this change.

[19] It appears that at all times Woodford first reported each morning to the plant where he received his work assignment from Justice for that day.

ployees, guards and supervisors as defined in the Act.

4. Since on or about April 13, 1981, Respondent has failed and refused to provide the aforesaid collective-bargaining representative with information relating to job descriptions, wages, and other benefits and conditions of employment of employees employed in the job classifications of machine operator, mechanic, and mechanic's helpers, as well as information regarding the maintenance and repair of trucks when such work is no longer performed by employees of Respondent, and, in so doing, has violated Section 8(a)(5) and (1) of the Act.

5. By interrogating employees concerning their union activities, sympathies, and/or desires, Respondent violated Section 8(a)(1) of the Act.

6. By creating the impression that its employees' union activities were under surveillance, Respondent violated Section 8(a)(1) of the Act.

7. By promising its employees pay raises if they voted against the Union, Respondent violated Section 8(a)(1) of the Act.

8. By threatening its employees with economic reprisals if the selected the Union, Respondent violated Section 8(a)(1) of the Act.

9. By threatening to transfer an employee if the Union were selected, Respondent violated Section 8(a)(1) of the Act.

10. Respondent did not violate the Act in any other manner.

11. The unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has committed certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and the policies of the Act. Specifically, I recommend that Respondent be ordered to provide the information requested by the Union in its letters of March 27, 1981.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[20]

The Respondent, Cherokee Culvert Company, Inc., Macon, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Construction, Production & Maintenance Workers, Local Union 1210, affiliated with Laborers' International Union of North America, by refusing to furnish it with information relating to job descriptions, wages, and other benefits and conditions of employment of employees employed in the job classifications of machine operator, mechanic, and mechanic's helpers, as well as information regarding the maintenance and repair of trucks when such work is no longer performed by employees of Respondent.

(b) Interrogating its employees about their union sympathies, activities, and desires.

(c) Creating the impression that its employees' union activities are under surveillance.

(d) Promising its employees benefits if they reject the Union.

(e) Threatening its employees with economic reprisals if they select the Union as their bargaining representative.

(f) Threatening to transfer employees if the Union is selected as the bargaining representative.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and the policies of the Act:

(a) Furnish the Union in writing with information relating to job descriptions, wages, and other benefits and conditions of employment of employees employed in the job classifications of machine operator, mechanic, and mechanic's helpers, as well as information regarding the maintenance and repair of trucks when such work is no longer performed by employees of Respondent as set forth in the Union's letters of March 27, 1981.

(b) Post at its Macon, Georgia, facilities copies of the attached notice marked "Appendix."[21] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO RECOMMENDED that, insofar as the complaint alleges matters which I have not found herein to have violated the Act, the complaint is hereby dismissed.

[20] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."